

FROM SENATE BILL 409-FN

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Four

AN ACT revising the vocational school licensing statutes.

Be it Enacted by the Senate and House of Representatives in General Court convened:

190:1 Regulation of Private Trade, Commercial, Correspondence and Other Schools; Subdivision Heading Amended. Amend the subdivision heading preceding RSA 188-D:19 to read as follows:

Regulation of Private *Postsecondary Career Schools*

190:2 Regulation of Private Postsecondary Career Schools. RSA 188-D:19-23 are repealed and reenacted to read as follows:

188-D:19 Definitions; Exclusions.

I. The following definitions shall apply in this subdivision except as otherwise provided:

(a) "Alternative delivery" means a mode of instruction, which does not involve face-to-face instruction between instructor and student in the same geographic location. This mode of instruction shall include Internet, televised, video, telephonic, and correspondence media.

(b) "Entity" means any individual, firm, partnership, association, corporation, organization, trust, or other legal entity or combination of these entities.

(c) "Physical presence" means any physical location or place of contact, including a New Hampshire telephone exchange or a New Hampshire mail drop, and if an individual is conducting one or more of the following activities within this state:

(1) Advertising.

(2) Solicitation of potential students.

(3) Enrollment of students.

(4) Providing student services.

(5) Student mentoring.

(6) Instruction of students.

(d) "Private postsecondary career school" means any for-profit or nonprofit postsecondary career school maintaining a physical presence in this state. Schools that offer resident or non-resident programs,

including programs using modes of alternative delivery, beyond the secondary school level to an entity upon the payment of tuition or a fee shall be included in this definition.

II. "Private postsecondary career school" shall not include:

- (a) Schools authorized to grant degrees pursuant to RSA 292.
- (b) Schools licensed by a state agency other than the postsecondary education commission.
- (c) Schools operated by a business organization exclusively for the training of that business' own employees and at no charge to its employees.
- (d) Schools offering noncredit courses exclusively for avocational purposes, as determined by the executive director, in consultation with the postsecondary education commission.
- (e) Schools directly supported, entirely or partly, by the state of New Hampshire.
- (f) Noncredit courses or programs sponsored by recognized trade, business, or professional organizations solely for the instruction of their members that do not prepare or qualify individuals for employment in any occupation or trade, unless otherwise determined by the executive director, in consultation with the postsecondary education commission.
- (g) Schools that offer programs and courses exclusively on federal military installations.
- (h) Companies, individuals, or other legal entities that offer training at seminars or conferences, if either of the following criteria are met:
 - (1) The conference or seminar does not exceed 2 days; or
 - (2) The attendee receiving the training is not awarded any form of a certificate or diploma for having received the training.
- (i) Vendors that offer incidental training associated with the purchase of a product from said vendor, if the training is to familiarize the purchaser with its use and the purchaser is not awarded any form of a certificate or diploma for having received the training.
- (j) A person with fewer than 5 students per calendar year.
- (k) An individual or facility training students under 14 CFR part 91 or 14 CFR part 141, or receiving flight or ground instruction required by the Federal Aviation Administration.

188-D:20 Licenses and Fees.

I. Prior to registering or renewing a business or trade name, or soliciting students for enrollment, an entity maintaining a physical presence in this state shall be reviewed by the postsecondary education commission to determine if the entity requires a license. The executive director, in consultation with the postsecondary education commission, shall establish procedures to accomplish this review.

II. If the postsecondary education commission determines that a license is required, a private postsecondary career school maintaining a physical presence in this state shall register to obtain a license or license renewal from the postsecondary education commission. The license shall be issued or renewed pursuant to rules, adopted under RSA 541-A, by the executive director, in consultation with the postsecondary education commission. The rules shall establish minimum criteria, including but not limited to, financial stability, educational program, administrative and staff qualifications, business procedures, facilities, equipment, and ethical practices to be met by licensees. In no case shall a license or license renewal be issued to any school, which has not met the requirements of RSA 188-D:20-a or RSA 188-D:20-b.

III. The executive director, in consultation with the postsecondary education commission, may establish reasonable fees for administration of this subdivision, including fees for licenses, renewals, penalties, reimbursement for consultants, complaint investigation, and enforcement.

188-D:20-a Surety Bond. Before a license is issued or renewed, a school shall meet the requirements of this section or RSA 188-D:20-b, as determined by the postsecondary education commission.

I. A surety bond shall be provided by the school in an amount prescribed by the postsecondary education commission. The obligation of the bond is that the school, its officers, agents, and employees shall faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the school and entity enrolling as students. The bond shall be issued by a company authorized to do business in the state of New Hampshire. The bond shall be issued in the name of the postsecondary education commission, and is to be used only for payment of a refund of tuition and instructional fees due to a student or potential student, and the expense of investigating and processing the claims.

II. The amount of such bond shall be based on income from tuition at 10 percent of gross tuition, with a \$10,000 minimum. If a school licensed under RSA 188-D:20 should fail to provide the services required in a contract with any entity, as determined by a court of competent jurisdiction, the bond shall be forfeited, and the proceeds distributed by the postsecondary education commission in such manner as justice and the circumstances require.

III. The bond company may not be relieved of liability on the bond unless it gives the school and the postsecondary education commission 90 days written notice of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the school's license is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage, unless a replacement bond is obtained and provided to the postsecondary education commission.

188-D:20-b Student Tuition Guaranty Fund.

I.(a) A student tuition guaranty fund is hereby established within the postsecondary education commission and shall be administered by the postsecondary education commission. In lieu of the surety bond required in 188-D:20-a, the executive director, in consultation with the postsecondary education commission, may require a private postsecondary career school seeking the issuance or renewal of a license to participate in the student tuition guaranty fund.

(b) The fund shall be funded from an annual fee to be established by the postsecondary education commission assessed against each school duly licensed by the postsecondary education commission and all applicants for a license under RSA 188-D:20.

(c) The fund shall be used to reimburse students when a school has failed to faithfully perform its contractual obligations for tuition and instructional fees in the event of a school closing, and the expense of investigating and processing the claims.

II. The executive director, in consultation with the postsecondary education commission, shall adopt rules, pursuant to RSA 541-A, relative to the administration and maintenance of the fund.

188-D:21 Inspections. The postsecondary education commission may at any time inspect the premises, curriculum, teaching materials, faculty performance, sales literature, financial data, or other matters which are relevant to the educational and business activities of a licensed school in order to determine compliance with applicable laws and rules.

188-D:22 Revocation; Hearing. The executive director, in consultation with the postsecondary education commission may, after due notice and hearing, revoke the license of any school licensed pursuant to RSA 188-D:20 for violating the provisions of this subdivision or rules adopted hereunder. The provisions of RSA 541 shall apply to actions taken pursuant to this section.

188-D:23 Waiting Period. Every contract that purports to bind any entity to pay money to a private postsecondary career school in return for training shall be construed to be a home solicitation sales contract under RSA 361-B and shall be subject to the provisions of RSA 361-B.

190:4 Postsecondary Education Commission; Regulation of Private Postsecondary Career Schools. Amend RSA 188-D:28 to read as follows:

188-D:28 Penalty.

I. Whoever violates any [~~provisions~~] *provision* of this subdivision shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Whenever the postsecondary education commission determines that a person is violating any provision of this subdivision or the rules adopted hereunder, the postsecondary education commission shall request the attorney general, or other appropriate official having jurisdiction, to provide appropriate relief.